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Senate Sergeant-At-Arms State Capitol – B35 South

P.O.Box 7882 Madison, WI 53707-7882

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Senate Sergeant-At-Arms State Capitol – B35 South

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Senate Sergeant-At-Arms State Capitol – B35 South

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### SENATE HEARING SLIP

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DATE: JUNG 5, 2001

BILL NO. 5.15. 115

SUBJECT -Campaign Finance

Rep. John Ainsworth

GMAMEN ASSEMBLY District

(Street Address or Route Number)

(City and Zip Code)

(Representing)

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Senate Sergeant-At-Arms
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State Capitol – B35 South
P.O.Box 7882
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Senate Sergeant-At-Arms

State Capitol - B35 South

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#### Vote Record

#### Senate - Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

Clearinghouse Rule:
Appointment: Other:
Amdt:
Sub Amdt:
Indefinite Postponement Tabling Concurrence Nonconcurrence Confirmation
Aye No Absent Not Voting
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Motion Carried

Motion Failed

PRESIDENT
M. Angela Dentice, Milwaukee
PRESIDENT-ELECT
Keith R. Clifford, Madison
VICE-PRESIDENT
Lynn R. Laufenberg, Milwaukee
SECRETARY
Bruce R. Bachhuber, Green Bay
TREASURER
David M. Skoglind, Milwaukee
IMMEDIATE PAST PRESIDENT
Kevin Lonergan, Appleton



Keeping Wisconsin Families Safe

EXECUTIVE DIRECTOR Jane E. Garrott

44 E. Mifflin Street, Suite 103 Madison, Wisconsin 53703-2897 Telephone: 608/257-5741 Fax: 608/255-9285 www.watl.org

**Testimony** 

of

M. Angela Dentice on behalf of the

Wisconsin Academy of Trial Lawyers

Before the

Senate Judiciary, Consumer Affairs & Campaign Finance Committee

On

LRB Draft — 151/1

January 22, 2001

Senator George and member of the Committee, my name is M. Angela Dentice. I am a practicing attorney in Milwaukee, Wisconsin and the President of the Wisconsin Academy of Trial Lawyers (WATL). I will speak in favor of LRB Draft 151/1, also referred to as "The Impartial Justice Bill." Thank you for this opportunity to testify.

The Wisconsin Academy of Trial Lawyers (WATL) is a voluntary, statewide bar association whose 1,000 members are attorneys who represent injured consumers in personal injury litigation. In July 1999, the WATL Board of Directors endorsed that portion of the Impartial Justice Bill, which provided full public financing for the office of justice of the Supreme Court.

WATL supports full public financing for the office of Supreme Court Justice.

Like everyone here, WATL members are concerned about the escalating costs of running for Supreme Court Justice. We believe that fund raising inevitably raises questions of bias and partiality and judicial independence which tend to undermine public confidence in the integrity of judicial officers and the judicial process.

The independence of the judiciary is compromised when judicial candidates receive money from special interests and individual attorneys who appear before the court. The money appears tainted no matter the source of the contribution.

Last year the media have reported bruising multimillion-dollar contests for judicial races across the country, particularly in Michigan, Ohio and Mississippi. Attack advertising, independent expenditure campaigns, the use of aggressive political consultants and what are often only thinly veiled promises to sustain or overturn controversial decisions have become familiar parts of judicial campaigns. We desperately need an alternative scenario. That is why WATL supports full public financing for candidates running for the office of justice of the Supreme Court. We believe it can relieve the pressure to start an "arms race" for Supreme Court Justice.

If you have any questions, I would be happy to try and answer them.

Wisconsin Trial Lawyers



#### The League of Women Voters of Wisconsin, Inc.

122 State Street, Madison, Wisconsin 53703-2500 608/256-0827 FX: 608/256-2853 EM: genfund@lwvwi.org URL: http://www.lwvwi.org

Statement to the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform Regarding General Reform of Campaign Finance and Election Laws - LRB # 1551, *Impartial Justice* 

#### **January 22, 2001**

The League of Women Voters of Wisconsin is pleased to have this opportunity to respond to the reintroduced draft legislation relating to campaign financing with respect to the office of justice of the supreme court.

In September 1999 we spoke to the Assembly Committee on Campaigns and Elections in support of AB377 - known as Impartial Justice - which would have provided close to full public financing for Supreme Court elections.

Today we testify that we continue to believe that substantial public financing of Supreme Court elections will enable Wisconsin citizens to have confidence that those holding the highest office in our justice system can serve with independence because they have been able to run campaigns which are adequately financed

We believe that any private funding in Supreme Court races should be controlled by individual contribution limits set much lower than current law provides. This will encourage candidates to accept the public grant and control their spending. They will not need to fill their campaign treasuries with their own funds - only possible for the wealthy - or contributions from those with professional interest in the administration of justice. Their impartiality will be unquestioned.

We ask that consideration be given to providing matching supplementary grants to candidates who are the victims of independent spending above specified levels. Provisions to do this for all races were included in bills introduced last session and will be again in the coming session. Supplementary grants may effectively discourage and eliminate independent spending.

We thank you for holding this hearing and seeking input from interested citizens and organizations.

#### Why Wisconsin needs the Impartial Justice plan for Supreme Court elections

• "... The people want judges to be impartial, but contributors want judges to be partial." State Rep. Scott Jensen (R-Brookfield), quoted in Milwaukee Journal Sentinel, April 1, 1997.

As Rep. Jensen noted, Wisconsin's citizens expect that the justice system will be impartial and fair, without regard to financial clout. But a number of disturbing signs suggest that Wisconsin's traditions of impartial justice are threatened by big money:

#### The problem:

- 1. Spending and contribution levels have reached stratospheric levels: The 1997 election set a record for candidate fund-raising of \$888,924. Just two years later, the extraordinarily nasty Abrahamson-Rose race shattered that record by \$508,000, as \$1.37 million was contributed to the two candidates. Such high-cost campaigns tend to be built around TV advertising, often of a negative variety, and limited exposure to actual voters and their concerns.
- 2. Candidates depend overwhelmingly on large individual contributions from a tiny number of wealthy couples and individuals. Just 34 couples or individuals—an infinitesimal .0003% of the voting public in Supreme Court elections—provided 18.5% of individual donations. A very select 4.1% of donors (less than 2% of voters donate to Supreme Court elections) provided over half of donations (50.7%). While 10 wealthy and largely—white zip codes provided 43.3% of all contributions, the 10 Wisconsin zip codes where people of color comprise the majority donated only 1.8%. When candidates rely so heavily on donations from a very small, select, and wealthy layer of society, is the public likely to retain faith in the judiciary's ability to view legal problems from the perspective of the non-wealthy?
- 3. The levels and sources of funding have severely undermined public confidence and trust An October, 1999 poll of 600 Wisconsin adults conducted by Chamberlain Research revealed these sentiments among the public:
- 77.1% of those surveyed believe "campaign contributions to judges from lawyers and plaintiffs in high-profiles cased influence these judges' decisions in court."
- 81.1% believe that "Because of campaign contributions, special interest groups get better treatment in our courts and by our elected officials than do regular people."
- 4. Special-interest funding has created conflicts of interest which have made it impossible for the Supreme Court to operate at times. When a controversy arose over apparently-illegal contributions by pro-"school choice" forces aimed at assisting Justice Jon Wilcox, a majority of justice recused themselves from hearing the case. In another instance, Judge Ann Walsh Bradley recused herself from a crucial decision on "school choice," evidently because of the source of some of her campaign funding. And what of the other justices who chose not to recuse themselves in that case? What standard did they use to decide that they had no conflict of interest?
- 4. Candidates' self-contributions have increased 150 times since 1989.

In the four elections from 1989 through 1994 the candidates contributed \$16,092 to their own campaigns. Since then, candidates have contributed \$815,700 of their own money to their committees. The rapidly-growing importance of candidates' personal wealth has raised the disturbing spectre of a Supreme Court increasingly closed to those who lack such financial resources.

- 6. Supreme Court candidates are disproportionately dependent on lawyers and lobbyists. Lawyers and lobbyists provided 29.5% of all contributions of \$100 or more. In fact, lawyers and lobbyists provided 36.1% of all contributions of \$100 or more to incumbent Supreme Court justices. In a comparable period lawyers and lobbyists provided legislative candidates and the governor with 10.3% and 7.5% of all such contributions.
- 7. Big law firms' donations play crucial role: Of the \$413,475 in contributions from "lawyers and lobbyists," nearly one third, or \$135,910, has come from attorneys affiliated with just 10 law firms. Moreover, donations from members of these 10 law firms alone accounted for nearly one-tenth (9.7%) of all individual contributions.

#### **The solution:** *How the Impartial Justice plan would work:*

- 1. Candidates for Supreme Court choose to rely on "Impartial Justice" funding and agree to accept no private funding.
- 2. Candidates qualify for impartial funding by accumulating small "qualifying contributions" and signatures showing that they are serious candidates with a broad base of support.
- 3. Candidates receive full funding from the Impartial Justice Fund, with full funding defined as \$300,000 for Supreme Court candidates (with \$100,000 for primary elections)
- 4. If an Impartial Justice-funded candidate encounters a privately-funded candidate, the Impartial Justice Fund would match spending above the grants outlined in #3.
- 5. Similarly, the fund will match both "independent expenditures" and "issue ads" targeted at participating candidates.
- 6. The "Impartial Justice" funding would be derived from general-purpose tax revenues.



"Soliciting money from others, most of whom will be lawyers who practice in the court to which the candidate seeks election, inevitably compromises the judicial candidates' appearance of independence."—from the report of the bi-partisan Fairchild Commission on Judicial Elections and Ethics.

The Commission cited an "immediate and urgent need" for Wisconsin to adopt "full public financing of Supreme Court elections as soon as practicable."

#### **Endorsers of the Impartial Justice plan** (partial listing)

- Nathan S. Heffernan, former Chief Justice, Supreme Court
- ♦ Janine Geske, former Justice, Wisconsin Supreme Court
- ♦ US Sen. Russ Feingold
- Attorney General James Doyle
- US Rep. Tammy Baldwin
- ◆ Prof. Linda Greene, UW Law School
- Prof. Don Kettl, former chair of reform commission
- Judge Stanley Miller, former candidate for Supreme Court
- ♦ Judge Richard Brown, former candidate for Supreme Court
- Judge Charles Schudson, former candidate for Supreme Court
- ◆ Larry Bugge, former candidate for Supreme Court
- Walter Kelly, former candidate for Supreme Court
- US Rep. Tammy Baldwin
- ♦ John Stollenwerk, CEO, Allen-Edmonds Co.
- ♦ Judge Louis Butler, former candidate for Supreme Court
- ♦ Harry Franke, attorney and former Republican state senator
- Jack DeWitt, attorney and former chair of State Bar Association
- Frederick Kessler, Reserve Circuit Judge, Milwaukee
- ◆ Timothy Cullen, vice president of Blue Cross/Blue Shield
- Jeffrey Neubauer, president of Kranz, Inc. of Racine
- League of Women Voters of Wisconsin
- Wisconsin Council of Senior Citizens
- ♦ Wisconsin Academy of Trial Lawyers
- Racine Dominican Sisters
- Wisconsin Retired Educators Association

- Wisconsin Bar Association
- ♦ Wisconsin Realtors Association
- Wisconsin State AFL-CIO
- Sierra Club
- Wisconsin Federation of Teachers
- Pat Finder-Stone, member, Fairchild Commission
- Father Robert Cornell, member, Fairchild Commission
- Prof. Mort Sipress, political scientist, UW-Eau Claire
- Jack Lohman, CEO, Cardiac Evaluation Center
- ♦ NAACP, Wisconsin State Council
- Grav Panthers
- United Auto Workers
- Brown County Executive Nancy Nusbaum
- Waukesha County Executive Dan Finley
- Marinette Mayor Doug Oitzinger
- Waukesha Mayor Carol Lombardi
- Racine Mayor James Smith
- ♦ Madison Mayor Susan Bauman
- Former Wauwatosa Mayor Maricolette Walsh
- ♦ Peshtigo Mayor Dale Berman
- ◆ LaCrosse Mayor John Medinger
- ♦ West Allis Mayor Jeanette Bell
- Sheboygan Mayor James Schramm
- ♦ 20 Wisconsin dailiy newspapers and WISC-TV have praised the bill

	and the state of t	
	Questions about the Impartial Justice Bill	
PUBLIC CONCERNS	AB377 /SB 181 Impartial Justice Bill	
Full funding so candidates are free from special-interest influence?	<b>YES.</b> Provides virtually 100% public funding to qualified candidates. This 'impartial' funding will help to promote impartial justice. In line with bi-partisan Fairchild Commission recommendation of "full public funding of Supreme Court elections as soon as practicable."	
Curbs ever-escalating cost of campaigns?	<b>YES.</b> Limits campaign spending to size of grant; "equalizing" feature discourages spending "arms race." Funding parity is assured for participating candidates.	
Limits special-interest influence?	YES. Prohibits special-interest contributions to participating candidates	
Addresses impact of spending by non-candidate groups?	<b>YES.</b> Provides "equalizing" funding to keep pace with either independent expenditures or phony issue ads against participating candidates. A level playing field is thus maintained.	
Fair,affordable funding mechanism?	YES. \$1 million/ year from general revenues—about 25 cents per eligible voter.	
Enjoys wide public support?	YES. 71% of Wisconsin supports Impartial Justice Bill. (10/99 poll). Endorsed by:  □ Two former Supreme Court justices, 6 former candidates and Attorney General  □ 20 newspapers and WISC-TV have expressed support for the bill.  □ Endorsed by League of Women Voters, Wis. Bar Assoc., Interfaith Conference, NAACP, AFL-CIO, Wis. Bar, Sierra Club, and many other groups.	
Bi-partisan backing in Legislature?	YES. Passed State Senate 30-3 on March 28, with 13 of 16 Republicans voting for it.	

#### Northwestern

#### IN MY OPINION

#### Impartial funding crucial to restoring faith in courts

BY ROGER BYBEE

When you can't trust the courts to make independent decisions, who can you trust?

As the Green Bay Press-Gazette correctly noted (in a Dec. 18 editorial), "Both the appointed U.S. Supreme Court and the appointed Florida Supreme Court were dragged into partisan politics and accused of bias in their decisions about counting presidential election ballots."

That's why the replacement of special-interest funding with full "impartial" public-interest financing of Wisconsin Supreme Court elections is so vital. The role of funding by a tiny group of well-heeled donors already has thoroughly soured Wisconsinites' perceptions of the judiciary. An October 1999 poll of 600 likely voters in Wisconsin, conducted by Chamberlain Research of Madison, revealed these disturbing perceptions:

▶77.1 percent of those surveyed believe "campaign contributions to judges from lawyers and plaintiffs in high-profiles cases influence these judges' decisions in court."

▶81.1 percent believe that "because of campaign contributions, special interest groups get better treatment in our courts and by our elected officials than do regular people."

However, the same poll fortunately showed a silver lining: Wisconsinites are ready and willing to embrace fundamental reform to protect judicial independence. Over 71 percent of Wisconsin voters in the poll supported the notion of full public funding of Supreme Court elections. The support was strong among Republicans, Democrats, and

"Over 71 percent of
Wisconsin voters in the poll
supported the notion of full
public funding of Supreme
Court elections. The support
was strong among
Republicans, Democrats, and
Independents."

Roger Bybee Wisconsin Citizen Action

Independents. Even when asked about the \$1 million annual price tag, support remained very strong.

The Impartial Justice Bill, based on this concept of full and impartial public funding, found wide backing opinion-makers in the state. No less than 20 daily newspapers editorially have praised the bill, and a wide array of organizations—including the Wisconsin Bar Association, the Counties Association, Wisconsin Realtors, AFL-CIO, NAACP, and League of Women Voters—endorsed the bill.

With strong momentum for passage, the Impartial Justice Bill rolled through the state Senate on a an overwhelming and bi-partisan vote of 30-3. Despite the broad public and legislative support and Gov. Thompson ready to sign the bill into law, the Impartial Justice Bill was stopped on the one-yard-line when Assembly leaders ran out the clock.

Early next year, a new and improved Impartial Justice Bill will be introduced, with even wider support. But success is by no means guaranteed, as some Assembly leaders have indicated that they intend to try a bait-and-switch maneuver.

Their bill also would be called "Impartial Justice." but would provide only partial public funding, with the remaining campaign funds to be raised from the same old special-interest sources: wealthy lobbyists, attorneys, and corporate executives who all have a potential financial self-interest before the court. A 1999 study by Wisconsin Citizen Action, called "Courting the Supremes," showed that less than 4 percent of Supreme Court donors provide over 50 percent of all contributions, with 34 couples alone giving almost one-fifth.

The "Impostor Justice" strategy attempts to dress up the big-money status quo in the costume of reform. How can this Impostor Justice approach assure anyone that the Supreme Court is genuinely independent and impartial? Partial public funding only means that we can be partially confident of the court's impartially

Neither the Legislature nor the public should be fooled by the Impostor Justice strategy. Wisconsin citizens deserve to have faith in the independence and impartiality of their highest court. With over 90 percent of Wisconsin citizens voting in favor of campaign-finance reform in the recent referendum sponsored by the Wisconsin Counties Association, legislators will find it in their self-interest to take the side of authentic reform and back the genuine Impartial Justice Bill.

ROGER BYBEE is the communications director of Wisconsin Citizen Action, a 54,000-member public-interest organization.

#### WISCONSIN CITIZEN ACTION



Wisconsin's Public-Interest Watchdog

Contact: Roger Bybee 414/272-2562 FOR IMMEDIATE RELEASE Oct. 21, 1999

#### **Poli on impartial Justice Bill shatters stereotypes,** shows 71% support statewide for full public funding

A new public-opinion poll of Wisconsin citizens, released today at the State Capitol, shows a stunning 71% level of support for the Impartial Justice Bill (SB 181) calling for full public funding of State Supreme Court elections, with strong support across party lines and in all regions of the state.

The poll included an unusual feature: specifically asking citizens how the \$1 million cost of the Impartial Justice plan affected their support. As it turned out, the price-tag generally had a minimal effect on public support.

These results were based on a survey of 600 Wisconsin adults conducted by the highly-respected Chamberlain Research Associates of Madison between Sept. 28 and Oct. 8, with a margin of error of 3.97%.

"This poll shows that it is high time for the politicians, especially the State Senate, to catch up with their constituentes," remarked Wisconsin Citizen Action communications director Roger Bybee. "If the citizens of Wisconsin are to experience reform in time for the spring, 2000 Supreme Court elections, the Senate must hear this urgent message from the grass roots of Wisconsin and take up SB 181.

#### Shattered stereetypes

"The citizens' responses shatter many political stereotypes about who favors reform, and they also show that people don't simply 'want their money back' from government," said Bybee. "Instead, this shows that they want their government back from those with big money."

**Republicans:** Support for full public funding crossed traditional ideological lines. Support for the Impartial Justice Bill was 69.5% among Republican voters, defying the conventional wisdom that most REpublicans are hostile to public funding of campaigns. Even after being told the \$1 million cost, Republican support fell only minimally from the 69.5% level to a still-overwhelming 66.3%.

**Christian Right:** Particularly striking was the 77.3% support for the Impartial Justice Bill among selfidentified members of the Christian Right. Contrary to common stereotypes, backing for the Impartial Justice Bill was 6.1% higher among Christian Right members than among Democrats. The \$1 million cost to taxpayers had little impact on Christian Right support, as it dipped only slightly to 76.1%.

**Bemserats:** Democratic voters in the survey backed the Impartial Justice Bill by a 71.2% to 13.1% margin. Enthusiasm for the Impartial Justice Bill stayed high even with the \$1 million price-tage, as support remained at 68.5%.

**Independents:** Ticket-splitting voters were more supportive than either regular Republican or Democratic voters, backing the plan by 72.8%.

MORE

FAX (608) 256-1177

\*

\*





Support for the Impartial Justice plan was spread throughout the state, based on polling within seven major TV media markets. The once exception was the Minneapolis-St. Paul media market in northwestern Wisconsin, where coverage of Wisconsin government and issues in the available media is much more limited than in other regions of the state. But even there, support was a solid 57%.

#### <u>Doop concorn ever special-interest cleut</u>

The new survey also revealed a high level of concern about the prevalence of "If you don't pay, you don't play" practices in Wisconsin politics:

• 71% feel that "campaign contributions from special interest groups influence the policy decisions if elected officials in state government."

• 77.1% of those surveyed believe "campaign contributions to judges from lawyers and plaintiffs in high-profiles cased influence these judges' decisions in court."

• 81.1% believe that "Because of campaign contributions, special interest groups get better treatment in our courts and by our elected officials than do regular people."

"These findings should be a wake-up call to politicians who think that the public is unconcerned with what is happening in Madison," said Citizen Action's Bybee. "This obvious loss of faith in our government is also an urgent call to break the link between those writing the big checks and those writing our laws. The Impartial Justice Bill is a vital stepping stone toward further reform of all branches of our government, so we can revitalize Wisconsin's progressive tradition of clean government."

#### Bread, diverse support

Under the Impartial Justice Bill, qualified candidates for the Supreme Court would receive a fixed level of "clean" public funding to run for office and would not be allowed to use private money for their campaigns. If there is excessive spending by opposing private interests, the "clean" candidates' grants would be increased to keep the playing field level.

The Impartial Justice Bill has attracted a diverse base of support both inside and outside the Legislature. Among the legislative sponsors are three Republican senators. Endorsers of the bill include notables ranging from former Supreme Court justices Nathan Heffernan and Janine Geske to US Sen. Russell Feingold, Attorney General James Doyle, corporate executives like John Stollenwerk of Allen-Edmonds and Timothy Cullen of Blue Cross, labor organizations like the AFL-CIO and United Auto Workers, civic groups like the League of Women Voters, and the Interfaith Conference of Greater Milwaukee.

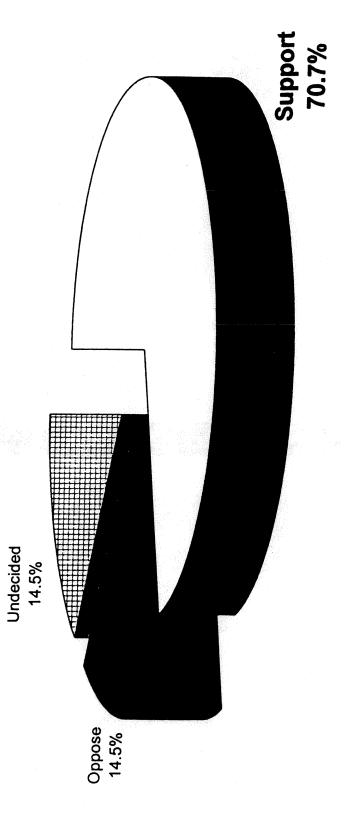
The Impartial Justice plan has been praised in editorials in eight daily papers around the state, along with WISC-TV in Madison. The proposal gained additional credibility when the bi-partisan "Fairchild Commission" on Supreme Court elections and ethics urged full public funding of Supreme Court elections.

With the Legislature due to adjourn Nov. 11, the Senate will be the next battleground for SB 181. Recently, the Assembly had passed a much weaker version of reform of Supreme Court elections under AB 234. AB 234 would not reform the campaign-finance process until 2001 and would provide only 45% public funding, leaving candidates dependent on special-interest money.

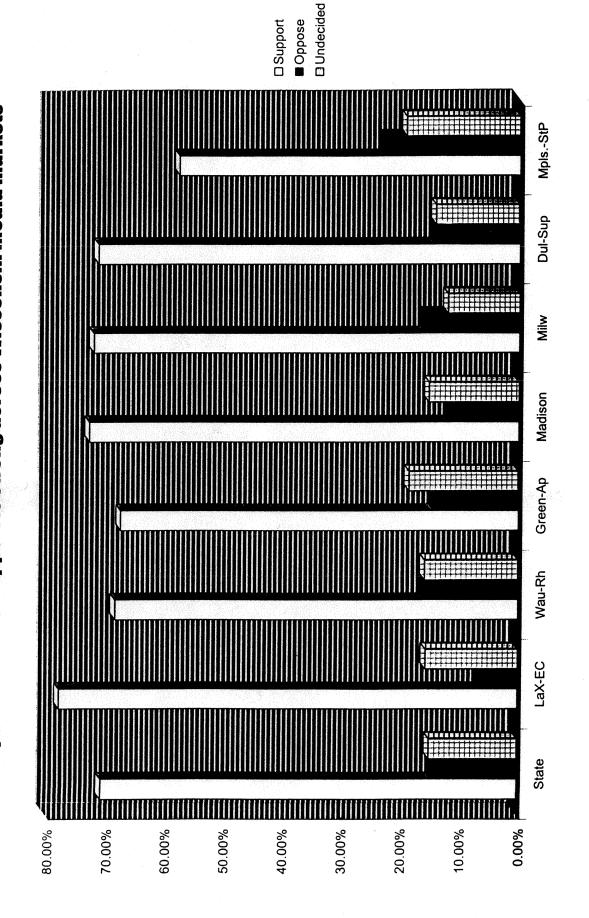
"The last two Supreme Court elections have broken records for the deluge of special-interest money flowing in from a tiny circle of super-wealthy special interests," Bybee stated. "If we are going to head off the continuing domination of the election process by special-interest money, the Senate must enact the Impartial Justice Bill immediately."

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#### Impartial Justice Bill: Overwhelming statewide support



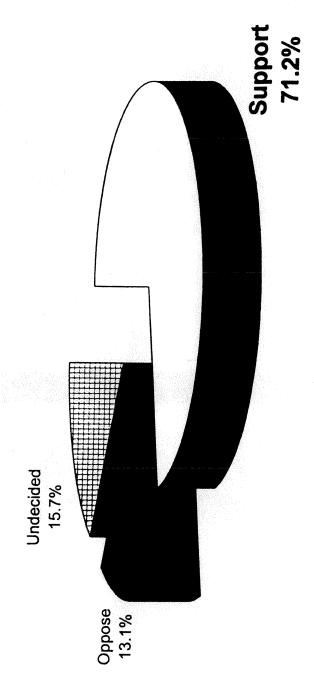
Impartial Justice: support is strong across Wisconsin media markets

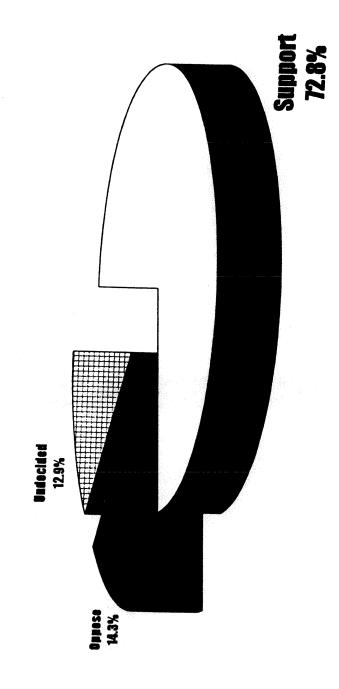




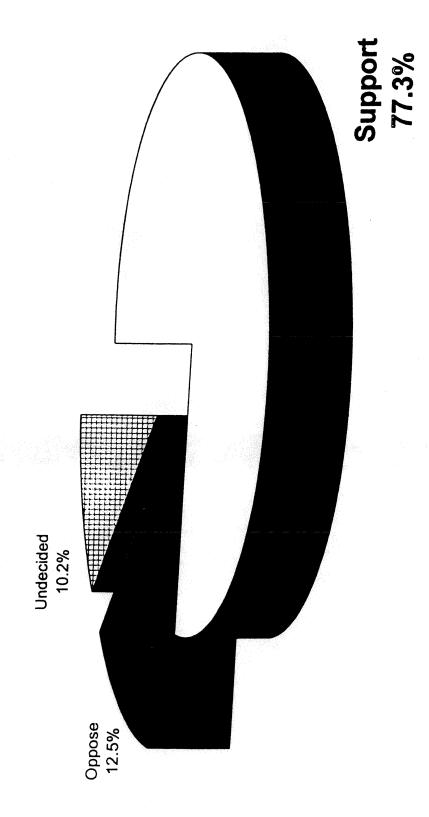
#### How does support for impartial Justice Bill measure up against ideological stereotypes?

# Democratic voters' support for Impartial Justice Bill





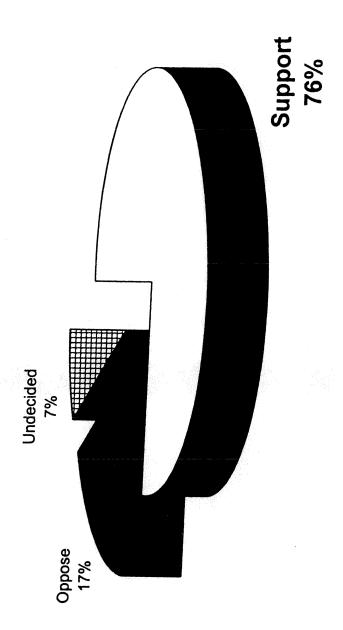
# **Christian Right members show overwhelming support for Impartial Justice Bill**



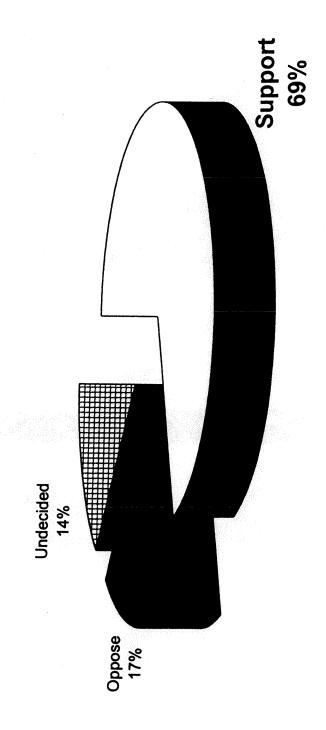


#### Does support for Impartial Justice Bill hold up after voters hear the \$1 million cost?

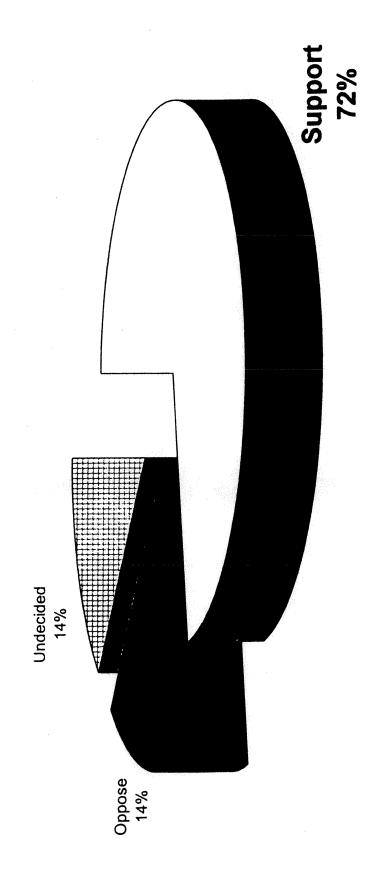
## Christian Right voters' support remains strong with \$1 million plan



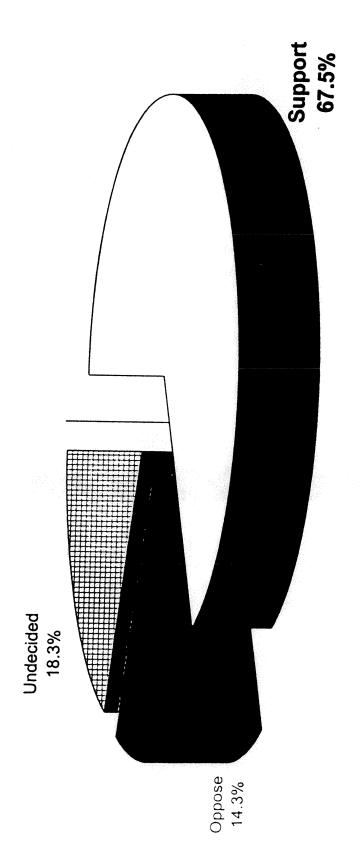
#### Democrats' support remains strong with \$1 million plan



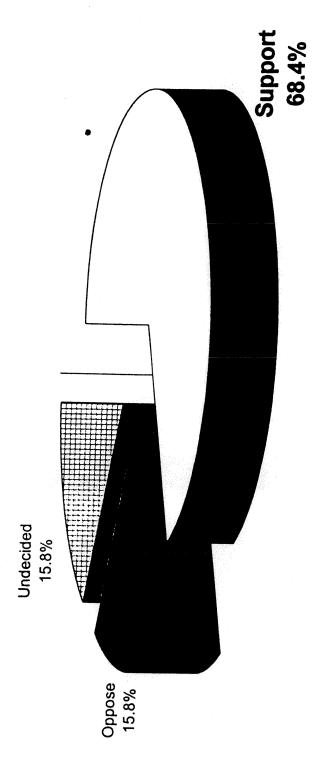
## Superior area shows strong support for Impartial Justice Bill



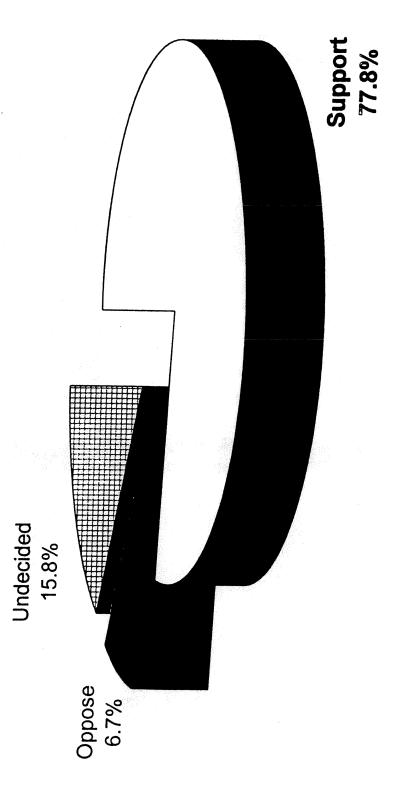
## Strong support in Green Bay-Appleton region for Impartial Justice Bill



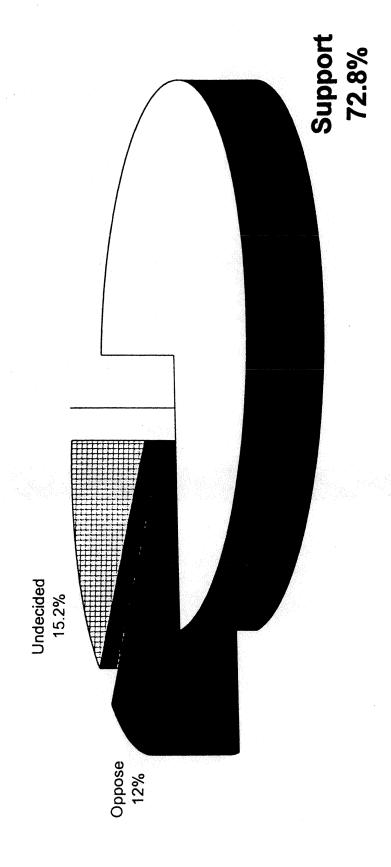
## Support strong for Impartial Justice Bill in Wausau-Rhinelander area



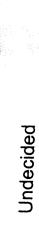
## Impartial Justice Bill: strong support in LaCrosse-Eau Claire area

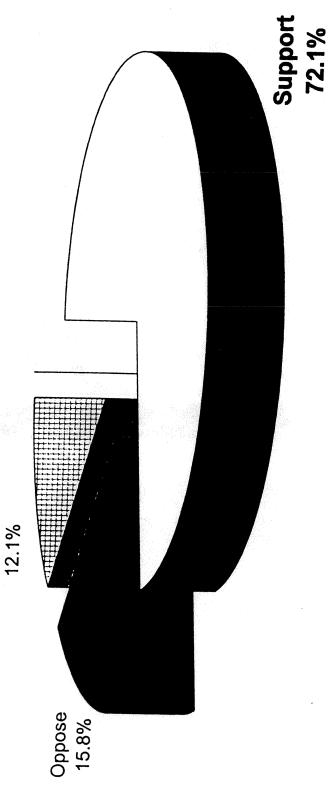


#### Madison shows strong support for Impartial Justice Bill

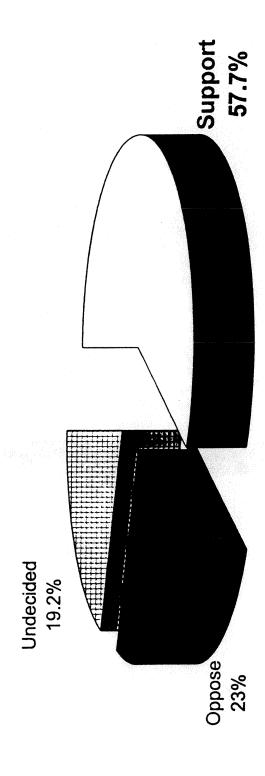


#### Milwaukee shows strong support for Impartial Justice Bill





# Northwest Wisconsin shows strong support for Impartial Justice Bill (Twin Cities media market)



#### **COURTING THE SUPREMES:**

#### Big money in Wisconsin State Supreme Court elections 1989-1999

"The people want judges to be impartial, but contributors want judges to be partial."

--Assembly Speaker Scott Jensen

A report by Wisconsin Citizen Action April, 1999





Wisconsin's Public-Interest Watchdog